

REMARKS

Claims 24-43 are pending in the present application. Claims 1-23 were previously cancelled. Claims 34 and 35 have been amended herein. No new matter has been added.

Claims 34-43 have been withdrawn from consideration as assertedly being directed to an invention that is independent or distinct from the invention originally claimed.

Claims 24-33 have been rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement.

Claim 24 has been rejected under 35 U.S.C. § 102(b) as assertedly being anticipated by U.S. Patent No. 5,903,035 to Wu et al. (hereinafter “Wu”). Claims 25-33 have been rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over Wu in view of U.S. Patent No. 5,668,035 to Fang et al. (hereinafter “Fang”). Applicants respectfully traverse these rejections.

Regarding the withdrawal of claims 34-43 by the Office Action as assertedly being directed to an invention that is independent or distinct from the invention originally claimed, Applicants respectfully submit that the Office Action failed to cite a proper reason for requiring the restriction, and thus, Applicants respectfully request that the withdrawal of claims 34-43 be removed and allow claims 34-43 to be reinstated and examined. In particular, the Office Action stated as a reason, “The base claims 34 and 39 are the method of forming a transistors [*sic*] comprising a multiple layers [*sic*] gate electrode.” Applicants would like to direct the Examiner’s attention to the originally filed claim 24 in the currently pending application in which a transistor gate electrode has multiple layers, *e.g.*, the first doped polysilicon layer and the second polysilicon layer. In

other words, the first doped polysilicon layer and the second polysilicon layer are multiple conductive layers.

Furthermore, the requirements for a restriction have not been met. For a restriction to be proper, the MPEP states that two criteria must be met.

There are two criteria for a *proper* requirement for restriction between patentably distinct inventions:

(A) The inventions must be independent (see MPEP § 802.01, § 806.04, § 808.01) or distinct as claimed (see MPEP § 806.05 -§ 806.05(i)); *and*

(B) There *must* be a *serious* burden on the examiner if restriction is required (see MPEP § 803.02, § 806.04(a) -§ 806.04(i), § 808.01(a), and § 808.02).

(MPEP § 803.) (Emphasis added.)

“If the search and examination of an entire application *can be made without serious burden*, the examiner *must* examine it on the merits, even though it includes claims to independent or distinct inventions.” (MPEP § 803.) (Emphasis added.)

In this case, both inventions identified by the Examiner involve forming transistors having gates of multiple conductive layers. As such, a similar search *must be made* for both inventions to be a complete and thorough search. In other words, to search for one invention is necessarily similar to a search for the other invention.

As a result, the burden on the Examiner can hardly be considered a “serious burden” as required by the MPEP, and accordingly, Applicants respectfully request that the withdrawal of claims 34-43 be removed and allow claims 34-43 to be reinstated and examined.

Regarding the rejection of claims 24-43 under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement, Applicants respectfully disagree. The Office Action stated, “The newly added limitation ‘wherein the logic gate oxide and the first doped polysilicon laver [*sic*, layer] form a first transistor and the cell

gate oxide, the first doped polysilicon layer, and the second polysilicon layer from [*sic*, form] a second transistor' is not described in the original specification." (Office Action, pages 2-3.) Applicants respectfully direct the Examiner's attention to paragraphs 39 and 41 of Applicants' application as originally filed where this limitation is explicitly disclosed. Thus, contrary to the assertion made by the Office Action, this limitation is disclosed in Applicants' application. Regarding Figure 3n, Applicants have submitted herewith a corrected drawing of Figure 3n such that Figure 3n is consistent with the written description. No new matter has been added.

Accordingly, Applicants respectfully request that the rejections of claims 24-33 under 35 U.S.C. § 112, first paragraph, be withdrawn.

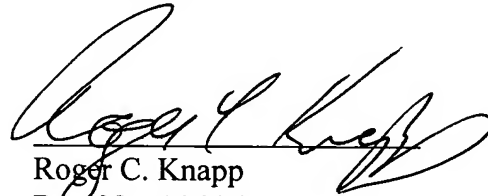
Regarding the rejection of claim 24 under 35 U.S.C. § 102(b) as assertedly being anticipated by Wu, Applicants note that the Office Action declined to consider the amendment made in the previous Amendment dated June 27, 2006. (Presumably, the Office Action declined to comment on the amendment due to the Office Action's incorrect assertion that the amendment was not disclosed in Applicants' application as discussed above.) Because the amendment is disclosed in Applicants' application and does not constitute new matter, Applicants respectfully request that the previously amended claim 24 be considered on its merits.

Applicants further request that the finality of the Office Action be withdrawn because the Office Action incorrectly asserted that Applicants application failed to disclose the previous amendment to claim 24 and, thus, failed to examine claim 24 in its entirety.

Claims 25-33 depend from claim 24 and add further limitations. It is respectfully submitted that these dependent claims are allowable by reason of depending from an allowable claim as well as for adding new limitations.

In view of the above, Applicants respectfully submit that this response complies with 37 C.F.R. § 1.116. Applicants further submit that the claims are in condition for allowance. No new matter has been added by this amendment. If the Examiner should have any questions, please contact Applicants' attorney at the number listed below. No fee is believed due in connection with this filing. However, in the event that there are any fees due, please charge the same, or credit any overpayment, to Deposit Account No. 50-1065.

Respectfully submitted,



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Date

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